

May 13, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Notice

In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities (CC Docket Nos. 02-33, 95-20, 98-10)

In the Matter of Federal-State Joint Board on Universal Service Review of the Definition of Universal Service (CC Docket No. 96-45)

In the Matter of USF Contribution Methodology System (CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170)

In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process (CC Docket No. 96-45)

In the Matter of Developing a Unified Intercarrier Compensation Regime; Comments Sought on the Petition for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic (CC Docket No. 01-92, DA 02-2436)

Dear Ms. Dortch:

On Tuesday, May 13, 2003, Scott Reiter and I met with Jessica Rosenworcel, Legal Advisor to Commissioner Michael J. Copps. We discussed NTCA's position on universal service and intercarrier compensation, its comments in the above proceedings and the attached documents.

In accordance with the Commission's rules, an original and two copies of this letter are being filed with the Secretary's Office. If you have any questions, please do not hesitate to contact L. Marie Guillory at 703-351-2021.

Sincerely,

/s/ L. Marie Guillory
L. Marie Guillory
Vice President, Legal and Industry

cc: Jessica Rosenworcel

Attachment

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NTCA'S POSITION IN UNIVERSAL SERVICE DOCKETS

- Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities (CC Docket Nos. 02-33, 95-20, 98-10)
 - The small rate-of-return (ROR) companies have made substantial progress in deploying broadband services under existing rules that permit them to invest in the infrastructure needed to provide these services and share risks by participation in the NECA pools.
 - These companies offer broadband services such as DSL as common carriers and need the ability to continue to do so.
 - Regulatory flexibility may be needed for some ROR carriers but mandatory reclassification of the broadband transmission services of all carriers would cause substantial adverse consequences and have unpredictable side effects on carriers serving high cost areas.
 - Some ROR carriers need regulatory flexibility because they face competition from providers that are not regulated under Title II.
 - The Commission can accommodate the needs of these carriers without taking the drastic step of redefining the services in a manner that forces all carriers to abandon ROR regulation, sufficient cost recovery and the benefits of NECA pooling.
 - The Commission should use its Section 254(d) permissive authority to assess reclassified services as well as other facilities-based broadband transmission services that are not presently required to contribute to universal service.

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- **Federal-State Joint Board on Universal Service Review of the Definition of Universal Service (CC Docket No. 96-45)**
 - The definition of universal service should evolve to include the offering of equal access to the consumer's interexchange carrier of choice.
 - Adding equal access will allow the Commission to attain its stated goal of establishing "a modern equal access and non-discriminatory regulatory paradigm that will benefit" all consumers.
 - Consumers for the first time ever will have the ability to comparison shop for competitive long distance services on both their landline and wireless phones.
 - Making universal service support conditional upon the provision of equal access does not violate section 332(c)(8) of the Act nor does it require a wireless provider to offer it. Wireless carriers would remain free, as they are today, to choose not to offer equal access to their customers.
 - Equal access meets the four-part criteria for acceptance into the definition of universal service.
 - Equal access has been deployed throughout the public switched network.
 - The overwhelming number of residential customers can choose among IXC carriers and subscribe to equal access.
 - Equal access to long distance services is consistent with the public interest and essential to public health, education and safety.
 - The inclusion of equal access in the definition of supported services is consistent with the principle of competitive neutrality.
 - The Commission should require a short transition period before it requires ETCs to provide equal access.

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- **USF Contribution Methodology System (CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170)**
 - More time is needed to assess the interim measures before making further changes in methodology.
 - Assessments of retail revenues are economically efficient. These assessments are self-correcting for changes in the market. They reflect customer choices.
 - The staff study of each of the connection-based alternatives demonstrates that none of the alternatives meets the requirement that all providers of telecommunications carriers make equitable and nondiscriminatory contributions. All involve large shifts among types of carriers that pay or among the classes of end users that pay. None of these approaches is self-correcting for market or technological shifts in the way services are delivered.
 - The pool of contributors should be expanded to include all facilities based Internet access service providers.
 - Wireline broadband Internet access services that are presently assessed should continue to be assessed if they are redefined or reclassified.

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- **Federal-State Joint Board on Universal Service Seeks Comment on the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process (CC Docket No. 96-45)**
 - Rural customers have an interest in the long-term sustainability of universal service.
 - Support is essential to maintain comparable services and rates in rural and high-cost areas.
 - Congress has accounted for the differences between rural and urban areas by legislating different treatment for the incumbent rural telephone companies that traditionally serve rural areas.
 - Rural telephone companies continue to require different policies and rules to ensure service to rural areas.
 - Support on the basis of embedded costs
 - Inclusion of all lines in determining support
 - The focus on manufactured competition for universal service support compromises the goals and purposes of the Act.
 - The rules are not competitively neutral.
 - The rules do not ensure "sufficient" support.
 - There is a need to reform the rules for designating and supporting ETCs in rural areas.
 - The rules should eliminate the opportunity for windfalls to competing ETCs who receive support on the basis of the ILEC's per line support.
 - The rules should comply with the statutory requirements that apply more stringent tests for designating additional ETCs in rural telephone company service areas.

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Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01-92)

Small rural telephone companies could be harmed by a wholesale embrace of the Commission's proposal to move to bill and keep as a unified form of intercarrier compensation to replace access or reciprocal compensation.

Access reform has already resulted in the shift of significant costs to universal service. These recent shifts have had a substantial impact on the sustainability of universal service. Smaller carriers are increasingly dependent on universal service support and subject to the uncertainties that are related to that dependency. Additional shifts may aggravate uncertainties.

End user charges in rural telephone company areas are higher than those in urban areas. A NECA study shows that end user charges for rural subscribers increased by 36 percent between 1994 and 2002, from \$20.59 to \$28.08 per month.¹ Non-rural customers rates, by contrast, increased 14 percent between 1994 and 2001, from \$19.81 to \$22.65 per month. A mandatory bill and keep regime is likely to raise local rates in the higher cost areas and impact the intrastate jurisdiction more significantly than it will affect interstate access. Most states have not implemented access reform following the 1996 Act.

It is NTCA's position that the Commission should augment the record before moving forward with its tentative conclusion to impose a unified bill and keep regime. Further studies should be done before additional costs are shifted to end users through a bill and keep regime which may work for some but not others.

An NTCA Task Force has initially proposed that the following principles should apply to any changes to access and reciprocal compensation.

- Rural ILECs should maintain the ability to recover their reasonable costs (including the cost of capital) of providing service.
- All carriers (including IXC's, CMRS providers, and VOIP providers) using the rural ILEC networks should pay their fair share of joint and common costs. End users should only bear a reasonable portion of network costs.
- Implementation of revised intercarrier compensation should not lead to an unsustainable universal service fund.

¹ Trends in Telecommunications Cost Recovery: The Impact on Rural America, October 2002, p. iii-iv.

- Rural end user rates and local calling areas should be maintained at levels that are comparable to those in urban areas.
- End user impacts of revised intercarrier compensation should result in reasonably proportional increases, if any, in urban and rural areas.
- Revised intercarrier compensation solutions must be addressed at the state and federal level simultaneously and for all types of traffic.
- Revised intercarrier compensation solutions should increase the ability of Rural ILECs to meet end user customer's service demands.
- Revised intercarrier compensation solutions must encompass practical means for identifying and billing appropriate parties.
- Revised intercarrier compensation should not lead to inefficient network design or operational inefficiencies.
- Implementation of a revised intercarrier compensation plan should consider appropriate transition plans.